



Entered on Docket  
September 02, 2009

A handwritten signature in black ink, appearing to read "Linda B. Riegler".

Hon. Linda B. Riegler  
United States Bankruptcy Judge

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**UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF NEVADA**

In re:  
  
USA INVESTMENT PARTNERS, LLC  
  
Debtor.

Case No.: 07-11821-LBR  
Chapter 11

Date: August 21, 2009  
Time: 9:30 a.m.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW RE: MOTION TO APPROVE (i)  
SALE OF MEMBERSHIP INTEREST IN TWELVE HORSES NORTH AMERICA, LLC  
PURSUANT TO 11 U.S.C. § 363; AND (ii) RESOLUTION OF POTENTIAL CLAIMS  
PURSUANT TO FED. R. BANKR. P. 9019**

The Motion To Approve (i) Sale Of Membership Interest In Twelve Horses North  
America, LLC Pursuant To 11 U.S.C. § 363; And (ii) Resolution Of Potential Claims Pursuant  
To Fed. R. Bankr. P. 9019 (the "Motion")<sup>1</sup> [Dkt. No. 865] filed by Lisa M. Poulin ("Trustee"),

<sup>1</sup> Unless otherwise expressly stated herein, all undefined, capitalized terms shall have the meaning ascribed to them

1 the Chapter 11 trustee for USA Investment Partners, LLC ("USAIP"), was heard and considered  
 2 by the Court on August 21, 2009 at 9:30 a.m. Counsel's appearances are reflected in the Court's  
 3 record of the proceeding. The Court read the Motion, the Declaration Of Lisa M. Poulin In  
 4 Support Of Motion To Approve (i) Sale Of Membership Interest In Twelve Horses North  
 5 America, LLC Pursuant To 11 U.S.C. § 363; And (ii) Resolution Of Potential Claims Pursuant  
 6 To Fed. R. Bankr. P. 9019, [Dkt. No. 864] the (the "Poulin Declaration"), and the Agreement For  
 7 Purchase And Sale Of Membership Interest In Twelve Horses North America, LLC (the  
 8 "Agreement"), attached as Exhibit "A" to the Poulin Declaration. The Court was asked to take  
 9 and did take judicial notice of the pleadings, papers, and other records of the proceedings in the  
 10 above captioned case. The Court entertained the argument of counsel and accepted proffers of  
 11 proof. Based upon the foregoing and other good cause appearing,

12  
 13 THE COURT ENTERS THE FOLLOWING FINDINGS OF FACT AND  
 14 CONCLUSIONS OF LAW:  
 15

#### 16 FINDINGS OF FACT

17 1. Trustee has provided proper and sufficient notice of the Motion as required by 11  
 18 U.S.C. § 363(b)(1) and Fed. R. Bank. P. 2002(a)(2), (c)(1), and (k), and 6004(a) and (c).

19 2. A reasonable opportunity to object to or be heard regarding the Motion has been  
 20 provided to all parties in interest.

21 3. As set forth in the Motion, USAIP owns a sixty percent (60%) membership  
 22 interest in Twelve Horses North America, LLC ("THNA"), including, without limitation, the  
 23 corresponding capital account and the income, gains, losses, deductions, credit, and distributions  
 24 attributable to such membership interest (as more specifically defined in Section B of the  
 25 Agreement, the "Transferred Interest").  
 26

27 \_\_\_\_\_ (continued)  
 28 in the Motion.

1           4. As substantiated by the Poulin Declaration, Trustee has advanced sound business  
2 reasons for the sale of the Transferred Interest to OTOlabs, LLC pursuant to the terms of the  
3 Agreement.

4           5. The Agreement represents an arms-length transaction between Trustee, OTOlabs,  
5 LLC, and One to One Interactive, Inc. and is the result of substantial and material negotiations  
6 between duly authorized representatives of both parties.  
7

8           6. OTOlabs, LLC and One to One Interactive, Inc. are "disinterested" parties within  
9 the meaning of 11 U.S.C. § 101(14), and are not, and have never been, creditors, equity security  
10 holders, or insiders of USAIP.

11           7. The transactions contemplated by the Agreement have been negotiated in good  
12 faith, and the parties to the Agreement have, at all relevant periods, acted in good faith and are  
13 therefore entitled to the protections of 11 U.S.C. § 363(m).  
14

15           8. All of the terms of the transactions contemplated by the Agreement, as well as the  
16 genesis and background of the Agreement, have been disclosed to the Court.

17           9. The terms and conditions of the Agreement are fair and reasonable, and the  
18 Trustee's execution of the Agreement represents a sound exercise of her reasonable business  
19 judgment.  
20

21           10. The transactions contemplated by the Agreement are in the best interests of  
22 USAIP's bankruptcy estate and creditors.

23           11. The Termination of Tolling Agreement (the "Termination Agreement") was  
24 negotiated at arms-length and in good faith.

25           12. The resolution of any potential claims held by USAIP against THNA, David  
26 LaPlante, Martin Gastanaga, and Steven Spencer through the Agreement and Termination  
27 Agreement is fair and reasonable and in the best interest of USAIP's estate and creditors.  
28



13. To the extent that any of the forgoing Finding of Fact is more appropriately construed as Conclusions of Law, it shall be deemed as such.

#### CONCLUSIONS OF LAW

1. The Court has jurisdiction to consider the Motion in accordance with 28 U.S.C. §§ 157 and 1334. The Motion constitutes a core proceeding pursuant to 28 U.S.C. §§ 157(b)(2)(A), (4), (M), (N), and (O), and venue before this Court is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

2. Trustee and USAIP has fully complied with all of the requirements of 11 U.S.C. § 363.

3. The sale of the Transferred Interest pursuant to 11 U.S.C. § 363 free and clear of all liens is appropriate and in the best interests of USAIP's estate.

4. Pursuant to 11 U.S.C. §§ 105(a) and 363(f), the Transferred Interest is properly being sold, conveyed, granted, assigned, transferred, and delivered to OTOLabs, LLC under the Agreement free and clear of any and all liens, claims, encumbrances, or interests in the Transferred Interest of an entity that may have existed prior to Closing (as defined in the Agreement).

5. The compromise effectuated by the Agreement and the Termination Agreement is approved as it satisfied In re A&C Properties, 784 F.2d 1377 (9th Cir. 1986) and is fair and reasonable and in the best interest of USAIP's estate.

6. To the extent that any of the forgoing Conclusions of Law is more appropriately construed as Finding of Fact, it shall be deemed such.

7. OTOLabs, LLC is a good faith purchaser with the meaning of 11 U.S.C. § 363. The price that OTOLabs, LLC is to pay for the Transferred Interest under the Agreement is fair consideration and constitutes reasonably equivalent value.

1 Prepared And Submitted:

2 GORDON SILVER

3  
4 By: 

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**LR 9021 CERTIFICATION**

In accordance with LR 9021, counsel submitting this document certifies as follows:

- ☐ The Court waived the requirement of approval under LR 9021.
- ☐ No parties appeared or filed written objections, and there is no trustee appointed in this case.
- ☒ A copy of this proposed order was delivered to all counsel who appeared at the hearing, any unrepresented parties who appeared at the hearing, and any trustee appointed in this case, and each has approved or disapproved the order, or failed to respond, as indicated below: [list each party and whether the party has approved or failed to respond to the document.]

James Tucker Bradley, Esq. appeared telephonically at the hearing on behalf of OTOLabs, LLC and One to One Interactive, Inc. and has approved these findings of fact and conclusions of law.